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Appropriations Committee
February 20, 2007

[LB249 LB317 LB318 LB319 LB320 LB321 LB322 LB323]

The Committee on Appropriations met at 1:30 p.m. on Tuesday, February 20, 2007, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB317, LB318, LB319, LB320, LB321, LB322, LB323, and LB249. Senators present: Lavon Heidemann, Chairperson; Lowen Kruse, Vice Chairperson; L. Pat Engel; Tony Fulton; John Harms; Danielle Nantkes; John Nelson; John Synowiecki; and John Wightman. Senators absent: None. []

SENATOR HEIDEMANN: I'd like to welcome everybody to the Appropriations Committee. I think my name is Senator Lavon Heidemann. I'm from the 1st District, southeast Nebraska. To my right is the committee clerk, Kendra Papenhausen. Right beside her is Senator Nantkes from Lincoln, District 46, the "Fighting 46th" as we are told. Next to her is Senator John Wightman from District 30 and that is...36, and actually it's Lexington. We have a little bit of a print there. It is Lexington, though, is that correct? []

SENATOR WIGHTMAN: Correct. []

SENATOR HEIDEMANN: Next to Senator Wightman will be Senator John Synowiecki from Omaha. Senator Synowiecki, and I left a little bit early, is in Retirement Committee right now and it's kind of extending on; will join us later. Next to Senator Synowiecki is going to be Senator Lowen Kruse of Omaha, District 13. He is also the Vice Chair of Appropriations and he has a bill up, I believe, right now so he'll be joining us later also. I am Senator Lavon Heidemann. Sitting...this is Mike Calvert from the Fiscal Office, by the way. Sitting next to Mike Calvert is Senator Pat Engel from South Sioux City, District 17. Sitting to his left is Senator Tony Fulton from Lincoln, District 29. To his left is Senator John Nelson of Omaha, District 6; and to his left, Senator John Harms from Scottsbluff, District 48. I ask that at this time everybody would please shut off all cell phones. Testifier sheets are on the table or near the back doors; fill out completely and put in box when you testify. You do not need to fill out this form if you aren't publicly testifying. At the beginning of testimony, please state and spell your name for the record. Nontestifier sheets near the back doors, if you do not want to testify but would like to record your support or opposition to the bill, only fill out if you will not be publicly testifying. If you have printed materials to distribute, please give them to the page at the beginning of your testimony. We need 14 copies. If you don't have them, I think we could probably do that. Keep testimony concise and on topic; under five minutes would be appreciated. As I stated before, the rules are posted and to remind both the committee and everybody here that this is being recorded and you are being broadcast over closed-circuit TV. With that, we are going to open our hearing on LB...we're going to do this more bills at one time. We're going to open our public hearing on LB317, LB318, LB319, LB320, LB321, LB322, and LB323. They are the Governor's budget bills. In lieu of the Speaker for the Governor, we have Gerry Oligmueller. [LB317 LB318

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GERRY OLIGMUELLER: (Exhibit 1) Good afternoon, Senator Heidemann and members of the Appropriations Committee. For the record, my name is Gerry Oligmueller. My name is spelled G-e-r-r-y O-l-i-g-m-u-e-l-l-e-r. I am the State Budget Administrator and administrator of the Department of Administrative Services Budget Division. I'm appearing here today on behalf of Governor Heineman in support of LB317 through LB323, which constitute the major portion of the Governor's budget package. The funding for the operations of state government, state aid to individuals and other governments, and capital construction are contained in these legislative bills. The contents of this legislation have been summarized and presented to you in a publication entitled, "Executive Budget 2007-2009 Biennium," and dated January 11, 2007. I have provided a copy of that publication along with my prepared remarks to the committee clerk for your record. Three other legislative bills--LB324, LB326, and LB327--which were introduced at the request of the Governor, are part of his specific budget recommendations, have been heard in other committees, and one remains to be heard at a later date in the Appropriations Committee. The Governor's recommendations for adjustments to the current fiscal year 2006-2007 contained in LB317 represent a net reduction of \$16.5 million in current General Fund appropriations. The Governor's recommendations for the upcoming budget biennium are contained in LB318 through LB321, along with the impacts of LB324, LB326, and LB327, which I mentioned earlier. These recommendations provide for a two-year average increase in General Fund appropriations of 3.8 percent. LB322 and LB323 contain specific provisions related to various new or existing funds, certain excise taxes, cigarette tax distributions, and transfers necessary to administer and account for budget recommendations made by the Governor for the upcoming biennium. I know that the provisions of all this legislation have been the subject of your committee working sessions these past five weeks. In addition to today's formal introduction of these legislative bills, the Governor's recommendations and committee's preliminary recommendations will be the subject of your committee hearings for the next four weeks. Out of respect for the many hours of review you've already undertaken, and recognizing the time committed in the weeks ahead to hearings on specific budget issues, I will not today make an effort to belabor the specific elements of the Governor's budget package. Agency directors will be prepared to discuss specific recommendations related to their agencies during their budget hearings, as they are contained and reflected in the legislation that is introduced today. In addition, the Governor's budget staff and I will remain available, as necessary, to assist the committee and Legislative Fiscal Office Staff as you prepare for your final recommendations to the Legislature. While your formal report of preliminary recommendations has not been issued, it is apparent from the informal reporting that the committee has joined the Governor to call for restraint in state government spending. On behalf of Governor Heineman, I do want to share how much we appreciate the hard work of the Appropriations Committee. The efforts of this committee are extremely important, as we also work with the Revenue Committee and the

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Legislature to lower tax burdens in Nebraska. Finally, for the record, I do need to offer three technical amendments related to LB321, and one related to LB322 to conform the provisions of that legislation to the Governor's recommendations, otherwise known as drafting errors. Again, the Governor, his staff, and representatives from state agencies under the Governor's control will continue to be available to you as you work over the next several weeks to finalize your recommendations for the upcoming budget biennium. Do you have any questions you'd like to ask today regarding LB317 through LB323? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Thank you, Gerry. Do we have any questions for Gerry? Senator Wightman. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: One of the concerns we have, obviously, are the pay increases that you have built into your budget and that we considered our preliminary budgets for state employees and my understanding was you had about 2.0 percent included in there for pay increases, and obviously the special master's report came out over the weekend and was much higher than that. And I realize that still has...going to take time to work its way through with perhaps a industrial relations committee...commission ruling on that and maybe the Supreme Court eventually. But do you have that in any backup plan with regard to how that would be handled? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

GERRY OLIGMUELLER: Well, we're currently reviewing the special master's ruling and we'll need to make a decision on whether or not to appeal that prior to March 15. So I don't have anything specific today to report in that regard, but undoubtedly we will be visiting further with the committee in that regard. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: But you would find some approach to that as far as how you would handle that increase in the event it becomes final at the higher level. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

GERRY OLIGMUELLER: That's something we're currently looking at and would undoubtedly want to visit with the Appropriations Committee about as well. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: Thank you. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Any other questions for Gerry? Seeing none, thank you. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

GERRY OLIGMUELLER: Thank you. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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SENATOR HEIDEMANN: I would like to announce that Senator John Synowiecki from Omaha has just arrived and from probably Retirement Committee, so he's here to join us. Any other further testimony for or proponents for the Governor's budget request? We... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

JOHN JACOBSON: My name is John Jacobson, J-a-c-o-b-s-o-n. I'm here to talk for just a few moments about a recommendation the Governor has in LB320 concerning the state's share of an appropriation to solve a rather serious problem concerning Beal Slough. Beal Slough, as you may know or may not know, runs along the south border of the state penal facility near 14th Street, South 14th Street. I own a property just east of 14th Street, known as the old Fleming facility. The Governor recognized the need there because with the redistricting or the redrawing of the FEMA flood map, a lot of that property is now not only in the floodplain but also in the floodway. It has inundated, so to speak, a lot of private properties east of 14th Street, but in particular concern to this committee and to the Legislature is the fact that the state penal facility is almost entirely in the floodplain. The south end of the penal facility is about five feet under water, and it's caused by a constriction totally during...through the portion of Beal Slough that runs west of South 14th Street along the state penal facility. That is all state property. The Lower Platte Valley South NRD, the city of Lincoln, and the state all recognize this is a problem and, as I understand it, it has not yet met the approval of this committee, so I'm here to voice strong support. I believe you'll be getting a letter from Mayor Seng encouraging the committee to consider that as an appropriation for '07-09. It is just a catastrophe waiting to happen. It's not a matter of if; it's just a matter of when. And all of us know, we certainly don't want to have our state penal facility under any type of water conditions. With the emphasis nowadays on mold and mildew, we may never get it cleaned up, and it's just by the grace of God that it hasn't been a problem to now. The problem has been exasperated by the development of private industry east of 14th Street, nearly east to 60th Street, and with all the concrete and all the houses and all the runoff, Beal Slough can no longer handle it. And it is a problem. Olsson construction (sic) has done a study on it. I had a private study done on it by Mark Panelli (phonetic), a very well-known water expert, and there is no doubt at all, should it happen, the south half of the state penal facility is going to be under water. Not only is it in the floodplain, it's in the floodway, which is active running flood waters. So I'm here today to encourage the committee to look very long and hard at that. If I can answer any questions...yes, sir. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR ENGEL: Has the penal institution always been in a floodplain? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

JOHN JACOBSON: I can't speak for its history. It probably has been. Simply, if you look at the south end of the penal facility, it is low. It sits probably five or six or seven feet below South 14th Street. And as you drive across the bridge and look west, you'll see

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that Beal Slough is constricted and raised, and I presume back when they had the dairy herd just south of the state pen, and I happened to be budget director back in those days so I have a little knowledge of that, I think, frankly, a lot of fill material found its way into Beal Slough and now the current water studies show that that is the problem. Now the coordinated program that the three levels of government are talking about will take it from 14th Street clear down to Salt Creek, which will solve the problem. It's somewhere in the neighborhood of \$8 million to \$10 million. The city of Lincoln is going to incorporate their share in a bond issue this spring, and Governor Heineman has included, I believe, over the next three years \$900,000 in '08, \$1.2 million in '09, and \$1.2 million in 2010 as the state's share. The NRD, of course, will come in then with their share. It will be a joint effort between the three governments. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR ENGEL: Well, that doesn't change the problem...correct the problem, being as they built in that floodplain area, but...so how long have they realized that this is a problem? Just recently? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

JOHN JACOBSON: Frankly, I think...and Department of Corrections, of course, will be appearing before your body and Doug Hanson, their engineer, should be able to answer that question. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR ENGEL: Okay. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

JOHN JACOBSON: I would say that, yes, sir, some part of the penal facility has been in the floodplain for some time. As a matter of fact, if you get into it in detail, they have actually constructed some new facilities over the last 10 or 15 years, and let's just say somehow they received a dispensation to go ahead and build those properties. You and I probably wouldn't have, but they did. So not only are the grounds lying in the floodway and the floodplain, but also a lot of the barracks. So, you know, some of those bunks are going to float if the water comes up too high. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR ENGEL: I think you've answered my question. Thank you. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

JOHN JACOBSON: You're welcome. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Any other questions for Mr. Jacobson? Senator Fulton. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR FULTON: The...will there be an opportunity to get an idea whether this...the remedial fix, is this something that...we're not moving out of the floodplain, I guess first

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of all (inaudible), we're not moving out of the floodplain. There is going to be a remedy such that the flood...that risk is mitigated for this, for the penitentiary. Will we have the opportunity to ask whether that risk is mitigated to a certain level, or is it...is there...does the risk continue? I guess if there's going to be an appropriation made it would be nice to know that 15 or 20 years from now another study won't ensue that says, you know, we need to do something again. (Laugh) I guess can you speak to that, or will there be an opportunity to have someone speak to that? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

JOHN JACOBSON: I can't speak to it from the standpoint of the future. Possibly Doug Hanson, again, the engineer for the Department of Corrections, and possibly the director of the Department of Corrections, hopefully, will know that answer. Rich Robinson from the Governor's Budget Office is here in the room, possibly he could alert those gentlemen to the extent of that question so, when they do appear before you, they'll be prepared to answer. Essentially, this stage of it, a three-year stage of it, will simply...not simply, it's going to be a little complicated, but they will deepen it and bench it, and much as they've done east of 14th Street. As you drive along Highway 2 you'll notice every so often you'll see Beal Slough, and over the last 20 or 30 years it has been benched and has been cleared, and that really acts as a reservoir for floodwaters when they begin to come. And when it was done, it probably solved the problem. But with the construction that's gone on east, both on the north and the south side of Beal Slough, it increases the runoff, the problem starts again. So it's a very good question. They would have to take into account how much area is still left to develop in those areas, plus the excess capacity that they're building into the solution on this go-round. It's a very good question, because the state pen, next time you drive by, just take a look at it. It is low. I mean it, at the time, I'm sure, when it was all farm ground it didn't make any difference, but now we have hundreds if not thousands of acres of concrete and roofs that the water runs off and it's going to go to the lowest point and it's Beal Slough. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Any other questions? Senator Synowiecki? Senator Wightman. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: I would ask is any of this a ground water problem, or is it all floodwaters that...is it a high water plain in this area or...? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

JOHN JACOBSON: No, this is runoff. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: It's all runoff that's the concern. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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JOHN JACOBSON: This is, yes, sir, there is a little bit of water in Beal Slough on a daily basis, but during the course of the summer it will dry up. So, no, this is strictly runoff. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: The water table is not particularly high. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

JOHN JACOBSON: No, sir. No, sir. It is runoff. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: Okay. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Senator Synowiecki. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: Thank you for your testimony. I know in my area the natural resource district undertakes projects relative to flood control and so forth. What is the state interest in this in terms of funding the project? Isn't this typically and normally a natural resource district jurisdiction? And I know in my community they often collaborate with the city or the county. But what is the...rather...other than just that the penitentiary is there, what's the state interest in terms of this funding formula? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

JOHN JACOBSON: Well, the NRD owns Beal Slough up to 14th Street. West of 14th Street, now I may be wrong because I haven't been updated within the last few years, west of 14th Street it is state property. The state owns the property on the south, and they own the property on the north. And frankly, gentlemen, I and other property owners are being hostage...and ladies, I'm sorry, we're being held hostage to the fact that the state hasn't stepped up and said, you know, maybe we shouldn't have been dumping refuse in that creek over the last 50 years, and in so doing you've caused an awful lot of us a lot of problems. If you have a mortgage on your house or on your business, you have to have flood insurance and that's very expensive, not to mention that it's a catastrophic problem if we get a one in a hundred-year flood and you see a 10,000-acre lake south of Highway 2. It is state property, long and short, that's causing the problem. Now if the state wants to arm wrestle with the NRD over who should fund the correction, well, that of course...that's up to the state and the NRD. The NRD is going to participate in it. It's a three-way program because sooner or later, as you go west, you're going to run out of state property and it's going to become private property and then, of course, the NRD will step in. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: But the natural resources district is participating in this? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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JOHN JACOBSON: Yes, they are. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: As well as the city of Lincoln? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

JOHN JACOBSON: Yes, they are. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: And now the request has been made that the state of Nebraska directly participate. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

JOHN JACOBSON: Yes. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: Is there any history of the state of Nebraska participating in flood control projects that's within the purview of an NRD? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

JOHN JACOBSON: That's (inaudible). [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: And when you say when they own the creek or whatever it is, the NRD is responsible for the water flow, aren't they not? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

JOHN JACOBSON: They are. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: And when we do a flood control project, it's not necessarily a formula by which you go to who's responsible for it to help pay. Nevertheless, it needs to be done and I think it's within the purview and control and jurisdiction of the NRD and perhaps collaborative with the city or the county. I don't know where the vested state interest is, other than the State Penitentiary being located there, what the compelling state interest is in the project. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

JOHN JACOBSON: Well, and I cannot address that because I guess I own some farms. When the NRD wants to put a dam on one of my farms they come and they buy an easement, they come in, they build it, they maintain it, and they may very well come to the state, say, you give us an easement on Beal Slough and we'll fix it. I guess when I start thinking about being somewhat fiscally responsible, I can't imagine what it would cost to replace the Nebraska Correctional Facility, and if the state cannot compel the Lower Platte Valley South NRD to make some corrective actions, you're spending pennies to save dollars, you know, I'd hate to have to see each senator take their pro rata share of state prisoners back to their district to house them in the local jails because the state pen is under water. You know, that's not a viable solution. Now, you know, if everyone wants to duck and weave as to who's going to pay for it, of course,

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well, then that's for maybe meetings other than this one. But the three levels of government have gotten together. They all recognize it is a problem and, frankly, aside from those of us that own property east of 14th Street that would be heavily involved, the biggest risk lies with the state penal facility. It is the one that is, by far and away, most at risk. It just...it sits in the blue, in the blue area, if you've seen a FEMA map. It's just there, and it's deep. It's not just going to get your ankles wet, you know. I mean if you're not more than five feet, you're going to be swimming, and that's a lot of water. But you might want to take that up with Glenn Johnson, I believe, is the director of the Lower Platte Valley. You might want to have him come in and visit with the committee about it. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Any other questions? Seeing none, thank you for your testimony. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

JOHN JACOBSON: Thank you. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Other testimony for? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

NICOLE FLECK-TOOZE: (Exhibit 2) Good afternoon, Chairman Heidemann and members of the committee. My name is Nicole Fleck-Tooze. It's spelled...Nicole Fleck-Tooze is spelled N-i-c-o-l-e, last name is F-l-e-c-k-hyphen-T-o-o-z-e. I'm the special projects administrator with the city of Lincoln Public Works and Utilities Department, and I'm testifying today here on behalf of that department. I do have a letter for the committee, which I'd like to hand out. I would also like to speak to the same program that Mr. Jacobson just spoke to you about, Program 921, which is to fund...provide flood improvements to the State Penitentiary. The city, the Lower Platte South Natural Resources District, and the state Department of Corrections have had ongoing discussions about the flood improvements along Beal Slough in this lower reach, and we have had a very detailed study that was prepared by Olsson Associates to identify what the issues were and what needed to be done, and we have identified what we believe to be that portion of the project that benefits strictly the State Penitentiary versus that portion that's more of a community benefit, which the city and the NRD are looking at funding locally. We believe that the bill, as currently drafted, will...we're pleased to see that there's some funding included. As currently drafted, it does not fully fund the state's portion and the city urges the Appropriations Committee to fund the state's share of what's referred to in the bill as this part two of the flood control project, which would be \$5.79 million over the next two fiscal years. And if you take a look at the second page of the letter, there are a couple of amendments that are specifically proposed. The first is to address the issue of funding; and the second, to really address how we would cooperatively, as these three agencies, handle the funding in terms of the contract and in terms of an interlocal agreement. And I'd be available to answer any questions. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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SENATOR HEIDEMANN: Are there any questions? Senator Synowiecki. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: Nicole, thanks for your testimony. The opening line of your...Program 921 provides for flood improvements to the Nebraska State Penitentiary, is the flood improvements to the penitentiary or flood preventative measures that are to be taken for the creek? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

NICOLE FLECK-TOOZE: There are flood benefits to the State Penitentiary, as well as some other privately owned properties along the creek, but it addresses flooding that comes out of the Beal Slough during a flood event. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: And who represented the state when they accepted part of the agreement to participate in the funding for this project? Who was the representative of the state? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

NICOLE FLECK-TOOZE: Well, the representative at the state was Doug Hanson. I think there is no agreement in place for that cost share. That was what we had discussed informally and what the city and the NRD were proposing. We didn't know what the final proposal would be from the Governor's Office until we saw it included in the bill, but that was certainly what we had described as what we believe to be the state's share when we met with the staff from the Governor's Office. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: Does the state have jurisdiction over the water flow of that creek, or does the NRD have jurisdiction over the water flow of that creek? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

NICOLE FLECK-TOOZE: The NRD does have responsibility for the major stream network, but certainly as we're looking at what would...where would we see benefits from different portions of this flood control project we specifically looked at how we could get some benefits to the State Penitentiary. And so I think if you look at, you know, should local taxpayers be funding for a community benefit or should, you know, to what degree should the state versus local taxpayers be funding strictly for those benefits that go to the State Penitentiary. That's where we were looking at the cost share. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: How many other flood control projects within the city has the state directly participated in with a direct appropriation? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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NICOLE FLECK-TOOZE: I am not aware of any others. I think one... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: Okay, other than us just having an asset that might be impacted by a flood, what other compelling interest is there for the state of Nebraska to directly appropriate monies for this project? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

NICOLE FLECK-TOOZE: Well, I think one compelling interest is that that's a way to facilitate the project getting done. I mean, one of the reasons the project, the scope of the project that was included as it was, was that large of a scope in size, was to try to make sure that there were benefits for the State Penitentiary. And so certainly that is one benefit. One of the things that is included in the letter is that we did discuss some other alternatives, such as the Resource Development Fund. As we sit down and talk through how we might develop a cost share on this for all the interested parties, that would have funded somewhere in the area of 60 to 65 percent of the total. But what was actually put forward by the Governor's Office was to fund the state's interest through a direct appropriation, so... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: Does the natural resource district that has jurisdiction over the flow of this creek, do they have taxing authority? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

NICOLE FLECK-TOOZE: Yes, they do. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: Are they at their ceiling on their property tax levy? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

NICOLE FLECK-TOOZE: Not to my knowledge. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: Thank you. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Any other questions for Nicole? Seeing none, thank you for your testimony. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

NICOLE FLECK-TOOZE: Thank you. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Do we have any other testimony, proponent, support? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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DEAN EDSON: (Exhibit 3) Senator Heidemann and members of the Appropriations Committee, I'm Dean Edson. That's spelled D-e-a-n E-d-s-o-n. I'm the executive director of the Nebraska Association of Resource Districts presenting testimony in support of LB322 today. I'm routing a copy of my comments to you. I'm not going to read the entire statement. I'm going to try to summarize this as quickly as I can to you, to stay within the time limits imposed. What I wanted to do today, first of all, is to thank the Governor for his leadership in recognizing the budget need for the state of Nebraska to contribute financially to resolving the water challenges in Nebraska. Thing I want to focus in on today is what's going on in the Republican River Basin. We had a meeting with the four NRDs in the Republican River Basin, plus some surface water irrigators and some other interested parties last Thursday, February 15, down in Cambridge. The Attorney General's Office and representatives of the Department of Natural Resources were also there. Out of that day-long meeting we've made some headway, and I'll provide you some...a summary of that just shortly. What we're facing with right now is a short-term and a long-term problem that we've got to address. The short-term challenge to us is to get water in the river as quickly as possible and deliver it to Kansas. This means we've got to find ways to immediately find that water and get it in that basin. The effects of the current drought are complicating our efforts in this task. Before I get into the details of what they discussed out in Cambridge last Thursday, I want to go over what we've done in the past. In 2005, management plans were put in place by the NRDs at the state's directive at allocation levels intended to keep us in compliance with the compact. These allocations range from 11 to 13.5 inches of ground water per certified acre in that basin. At the end of 2005 our water use report showed that pumping was actually 30 percent below that allocation number. We had thought that we were on our way toward compact compliance. That 30 percent reduction equates to about 300,000 acre-feet of water that was not pumped. However, under the model that the three states used to estimate the water use, Nebraska only got credit for 4,000 acre-feet out of that 300,000 of savings. In 2006 our preliminary numbers look like we're going to be 15 to 20 percent below that allocation number, but the savings will be verified by the state at a later date. Based on our previous history, it's unlikely that Nebraska is going to receive a lot of credit out of that savings. I bring these issues...I want to bring these issues to point to show that we're reducing pumping in the basin, however, we're not getting the benefit that we'd hoped right away. This is primarily due to the fact that it's going to take years for the effect of reduced ground water pumping to get to the stream and eventually get delivered to Kansas. I also don't want anybody on this committee or in this room thinking that ground water regulation is not part of the solution, because it is. The ground water regulations have got to be in place to keep us in compliance in the long run, but it's the short-term issues where we really need the help. Thus, we need to look at some other options, and these are the options that were discussed out in Cambridge. First of all, the surface water leasing: Three irrigation districts--the Frenchman-Cambridge, Hitchcock and Red Willow, and Frenchman Riverside irrigations--came forward and offered to lease their water for 2000...the water that they

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would use in 2007, lease it to the state and deliver it to Kansas. This is the quickest, fastest way to get the water to Kansas because it's already in the system, either in storage or in natural flow. At this time I don't know exactly how many acre-feet of water is available, but it's somewhere probably around 30,000 acre-feet. Snow melt and other rain this spring could add to this total. As far as the cost for this water, it's up to the state of Nebraska, through the Department of Natural Resources, and the Attorney General's Office to negotiate the volume and the price for that water. It's my understanding these parties will be discussing that with you in the near future. There's also some model adjustments in additional ground water regulation that's being considered. The department revealed that Nebraska may have been underestimating the credit from reduced pumping and seepage from the Platte Basin to the Republican River Basin. This may be approximately 8,600 acre-feet per year of credit that we didn't receive that we should have. State of Nebraska, through the Department of Natural Resources and the Attorney General's Office, need to verify that amount and ask the other states to agree to that amount of credit in the near future. After we've done the surface water leasing and made the credit adjustments, we need to look at what additional ground water regulation may need to be put in place, but when we do these first two items we may not need to do additional ground water regulation, but I want to let everybody know that we're willing to take a look at that and reduce those pumping numbers if necessary. On the financing side of it, there are efforts on both financing and the regulatory that was discussed out there, and it's important that the state's financial participation in the solution is recognized. Although there's no unanimous consensus that was reached at the meeting, the group looked at increased NRD property tax levy authority and/or providing the districts with fee authority. There was no unanimous consensus that came out of that group of which one to use, but rather wanted to leave that open for future discussion. We also need to talk to other interested parties, including yourself, about the best way to go about developing the local financing side. One problem that we're going to have with that no matter what we do short term or on the financing locally, either property taxes or fees, it will take us a year minimum to collect the money. If we do it through property taxes, it's got to go through the whole property tax process and it's about a year in arrears before we get the money, so it will be over a year on the property tax and approximately that long or longer on the fees as well. So we're going to really rely...have to rely on the state for assistance this first year. (Inaudible) be quick to point out we want to try to get something put in place this session for the NRDs so we have some kind of financing mechanism locally to address this problem in the future. We don't want to have to keep coming back and relying on the state to come up with a new plan every year. We want to try to forge forward and get something put together so that we have a constant revenue stream both locally and state, and a regulatory scheme that keeps us in compliance. Again, the department and the Attorney General's Office have a better hand on these...the amount of funds necessary and some more of the details at a later date, and I'm sure they're going to be coming to you and providing you that information. I'll try to answer any questions you might have. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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SENATOR HEIDEMANN: Can you explain to us just a little bit, on the first page you talked about the pumping actually came to 30 percent below these numbers, amounted to 300,000 acre-feet, and why we only got credit for 4,000 acre-feet? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: That's a question a lot of us have been asking about the model. I can't explain it, other than the drought has some impact to it. I have also been told that some of the savings that we got through reduced ground water pumping that got to the stream, there was some surface water users that were waiting in line and scooped up that water in Nebraska and used it. There's nothing to stop a surface water user from taking all the water that's granted to them. Some of it could have got used by some surface water user in Nebraska. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Okay. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: That was part of the problem, too, with the questions on the model, and when I talked about that model adjustment, there were some adjustments. The state recognized that there may be some adjustments that need to be made, so we could get an additional 8,600 acre-foot credit. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Senator Harms. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HARMS: Dean, that was a question...one of the questions I wanted to ask you, is about the model that you referred to. Is this model a flood model? Is this model an accurate model, and does the two states agree to that model? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: It's the only...the best way I can answer, it's the only model we have. The three states, when they entered into the settlement agreement, agreed to use this model. And so if there are errors in it or adjustments that need to be made, those three--Nebraska, Colorado, and Kansas--need to get together and agree on any changes that get made to that. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HARMS: The other question I wanted to ask you, Dean, is that after the lawsuit Kansas brought a number of years ago, whose responsibility was it to make sure we didn't get ourselves in this position that we're talking about now? Why was it that we didn't have the program management? Now we're into a crisis mode we really shouldn't be in. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: Yeah, you raise a good question and I'll give you a little background and history on that. In 1996 this body passed LB108, which was the first effort to recognize

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conjunctive use...conjunctive water use in Nebraska. That statute that got passed allowed only the Republican River Basin districts to request the state to assist them in developing a management plan. That statute didn't apply to anybody else till 1999. The districts requested that the state start the studies to get the plan in motion and put moratoriums on in that basin so we can get a handle on water management. In 19...shortly after we put that request in, Kansas filed suit against Nebraska. The Attorney General's Office and the Department of Natural Resources went back out to those districts and asked the districts to withdraw their request to start managing ground water in that basin because they did...the state did not want to show that there was any ground water impact to streamflow, and actually it was the state's position that ground water was not included in this compact. We lost on that fact. Now we've got to include ground water. But in the meantime, from that period when Kansas filed suit until the settlement agreement, the state told the NRDs not to impose any moratoriums or implement any regulatory efforts on ground water users. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HARMS: And by "the state," you're referring to whom? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: State of Nebraska. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HARMS: Not...but within the state of Nebraska, who? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: The Department of Natural Resources and the Attorney General's Office, Nebraska Attorney General's Office. So even though we wanted to do something, we would have been going against the state of Nebraska in trying to implement some plan, which made it very difficult for us to stand on the sidelines and watch until everything got settled. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Senator Nelson. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR NELSON: Mr. Edson, thank you for the information that you have here. It's very interesting and informative. I'm also asking questions about the credit. Who determined that we would only get 4,000 credit feet? Was that...do we do that ourselves, the state of Nebraska, or who comes up with that figure or result? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: Those figures are agreed to when the three states get together and they review all the model inputs and determine what credits get made, and that's what's difficult for the NRDs. For us to go out on our own and try to do some management, additional management, we really would need the state of Nebraska to take those

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management changes and incorporate them into the model and do "what if" scenarios so we know that if we do X we get Y as a benefit. The NRDs do not have access to run that model ourselves. We have to have DNR do that. They're the only one that has access to it. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR NELSON: With regard to surface water leasing, what do you mean by dry year leasing? Is that water that's held in reserve for dry years? Is that what that means? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: When we get into dry year leasing, there's a couple things that might help explain this. In dry years, Nebraska...Nebraska's total allocation is reduced as far as how much water we can use in the entire basin. In those dry years, since we got a total reduced allocation, we need to find some other way to get water to the river faster so they use the terminology "dry year leasing." So you go find the water that's available and lease it in those dry years, and that's what we've been going through with the drought. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR NELSON: So the suggestion is that the state would spend money to lease this and then that water could go down to the state of Kansas, is that what they're saying, and released? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: That's correct. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR NELSON: Does the state of Kansas, far as you know, really want the water, or do they want money? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: Both. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR NELSON: They want both. Either one or the other you mean? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: I think they want both. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Senator Wightman. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: Again, thank you, Dean, for the information you've given us. When you get down to...does it get down to the interpretation of the model, or is it a mathematical formula that everybody had stipulated in advance would result in this? Obviously, they didn't stipulate it would result in the 4,000 acre-feet of credit, but was that just a mathematical computation from the model that you had, or was it subject to interpretation? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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DEAN EDSON: All of the water use is subject to running through this model that the three states have agreed to; that the model is used is...has been agreed to by the three states when they reach the settlement agreement. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: So based upon the model then, the 4,000 is what it spits out as far as the credit that was to be given, so now it's a question of whether the model needs to be adjusted. Is that correct? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: That's correct, but you also got to look at water flowing past stream...streamflow gauges and compact stream gauges that are in the Platte. All of that data is incorporated into the model as well. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: But is that already in the model, or could it have been miscalculated? Is that what you're intending, that that... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: Well, I think...I think that's what the department has been doing, has been reviewing this model. And what I pointed out here is there may be an error in the amount of credit that we actually should receive and I think they've discovered that, but I don't know. It's going to take some time because it's...the calculation has got to be verified and it's also got to be approved by the other states. But I think the state of Nebraska is going to vehemently argue for this change. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: But even with the 8,600 added to the 4,000, you're still only a small, small fraction of the 300,000. Is that correct? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: That's correct. If I can explain it another way, if you...if you just try to envision the entire river basin, the further away from the river, actual river stream, you get, the less impact ground water use has on streamflow. So you may have a well in which a lot of these cases, a lot of these wells are 10-15 miles away from the river. Well, you reduce that pumping on that well 10 to 15 miles away, you won't see that impact to streamflow for maybe 20 years. But that doesn't mean we don't do it now, because we need to do it now so that 20 years from now we don't have to try to make that up. That's part of the long-range plan is that you have...we have to regulate these ground water users so that in the long run we're in compliance. In the short term and in the dry years, that's where we need to turn our focus to something else, like surface water leasing. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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SENATOR WIGHTMAN: Thank you. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Senator Synowiecki. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: Dean, do you...does your organization have any input or position, if you will, on the Governor's recommendation to create a Water Resources Cash Fund? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: That's one thing that we're supportive of doing. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: Okay, Dean, I'm just reading here from the fiscal note, the fund shall be used to aid compliance efforts regarding the reduction of consumptive uses of water in regards to programs dealing with those natural resources districts deemed over appropriated or bound by an interstate compact or decree. I don't want to speak for the committee, but I found that scope of what you can spend that money on to be extremely broad and lacking specifics. And if your testimony here today is that your group who's directly impacted by this have not come to consensus then what is that? What are we funding if we put that \$2.5 million in there, what assurances can you give members of the Appropriations Committee where that money will go? And second part of my question is, what's the interrelationship with this fund and the connection and the relationship with this fund with our existing water funds that are out there? I believe we have two or three. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: Well, first of all, what assurances can I give you on the money will be well-spent, that's something I want to make sure that we're doing as well. I want to make some assurances that we are putting not just the state tax dollars but the local tax dollars toward beneficial programs. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: And what are they? I mean you...so you're not here...you're not prepared today to lay out the three or four things that the natural resource districts will take action steps on with this funding. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: Right now, it's surface water leasing. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: So this money will...so you can assure the committee that this \$2.5 million will be spent for lease...so essentially leasing land to keep it idle so they don't... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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DEAN EDSON: Certainly. What it would be used for is to lease the surface water that's already in storage that has been planned to be diverted out of the stream to irrigate crops. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: You would keep it there. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: No, we would release it to Kansas... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: Okay. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: ...and let it run down, run down the river to Kansas. Now it can drop into Kansas in a couple different forms. It can drop in through the main stem of the Republican River Basin, or it can drop in at the Bostwick Irrigation District that runs straight down into Kansas. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: So...I'm not totally understanding all these issues. So essentially that is paying farmers to not irrigate. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: Well, it's paying them for their water. Now there's other components of this, and this is why... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: I don't mean to interrupt, Dean, but I'm trying to understand the issues myself. Will farmers that will perhaps receive payment for not irrigating, could theoretically some of these drills...some of these drills have been put in within the last five, six years, for example, some of these wells? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: Yeah, but we're not talking about irrigation wells here. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: Okay. What are we talking about? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: Just surface water. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: Okay. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: The ground water is a total separate component. That is...ground water irrigation is when you drill a well away from the river and you pump out of the ground water. What the surface water diversion is, is that you put up a storage structure on

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the...on the actual stream itself or river itself and you hold back the water for storage for release during the irrigation season that gets diverted out and run onto farm ground. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: Okay. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: That's the water we're talking about. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: So, Dean, given your testimony today, we could amend this to say that this is what this \$2.5 million will be used for. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: That's what we wanted. That's what we want to use it for right now, is the surface water leasing, because that keeps the water in the river. It's already there, and we could send it directly to Kansas. Now the other part of the component here that you talk about is that we want to participate, and when I say "we," that the local NRDs want to participate in this, too, but we need authority to raise the revenue to match any state dollars that you put toward this. That's part of the long-term solution. Our levy authority in the Republican River Basin, for every penny we can raise about a half a million dollars for every penny property tax. Right now we're...we have the additional 3-cent levy authority for this year. That drops down to additional 2 cents next year and 1 cent, and then three years from now that goes away. And that money was to be used toward these programs. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: And, Dean, I have one more question. Don't we have current funds that...whose purpose and whose scope is to assist the locals with water issues? I mean, why are we...why are we resurrecting a new fund? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: Well, the primary reason is that any of those other funds out there do not have enough money in them to address this situation, and they were not intended to address this situation with the surface water leasing. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: Thank you. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Senator Harms. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HARMS: Dean, you know, with the Republican River issue, we know that we're overappropriated there. Okay. It's caused us some difficulties in regard to the

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overappropriation. Are we going to be able to salvage enough out of this to keep that economy, you know, where it ought to be? Because this is a real issue for anyone who lives along that particular basin, as well as even the North Platte, which is another issue. Are we going to be able to salvage that economy? Are we going to be able to salvage it to a point where we can survive it there without just destroying it completely, or have we gone too far? And the second portion of this question is, are you willing to support any of the research that looks at alternative crops, other ways we might be able to do some things differently? Because that may be the key to the future. We're not going to be able to do tomorrow what you're doing today to survive this, so... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: Yeah. You raise a good point about the economies. This is one thing that we're very cognizant of is that we want to be very careful not to impose too stringent a regulation where it does economic damage to the communities. But we have to put the regulation in place as close to those limits as we possibly can under this situation. That's where it comes up with...you come up with some tax dollars to help offset any economic damage that you may do in those communities. So we're talking about if we take out 30,000 acres of surface water irrigation in one county, that could be a lot of...could result in some significant economic damage to that one county, and there may be two, three school districts. That's why we're looking at trying to find some way to offset that loss by putting some money back in, back into that community. Your second question on the research, we are...we have been working with the university and other interested parties, and continue to, and are looking for new opportunities to help producers use less water and grow, maybe not the same crops, but maybe grow the same crops if they choose to on less water, but look at alternative crops too. I can...the best example I can give you is that I was raised on an irrigated farm in Dawson County that had both surface water and ground water, and when I was a young lad, which seems sometimes starting to get further and further away, we were probably irrigate...we were probably putting on 30 to 35 inches of irrigation water on our farm to grow a crop, and we were probably growing...oh, my dad and I felt we had probably a pretty good yield if we got 180 bushels or 200 bushels per acre. That same farm today is raising about 240 to 250 bushels per acre and I'm using 11 inches of water on that right now. And that's done through the advances that we've got in research, the irrigation efficiencies that we've imposed on the farm, and I'm not alone. I am probably behind the curve on what a lot of other people are doing out there. We've got some folks, even in the Republican River Basin, that are growing 200...225 to 250 bushel corn on six inches of water. And if we can get more producers to get to that point we're going to have more water savings, plus we're going to keep the economies going. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HARMS: Thank you. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Senator Wightman. [LB317 LB318 LB319 LB320 LB321

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SENATOR WIGHTMAN: Just so that I'm clear, Dean, on the \$2.7 million that you're talking about, all that would go to surface water appropriators as opposed to well appropriators, or would it be a split between them? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: I think right now what they're talking about is just going to the surface water users, because that's the best way to get the water in the stream, because it's already there. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: What one... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: But I'm going to...I'm going to...again, I want to... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: Hedge a little. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: ...I want to leave that to the department and to the Attorney General's Office, because the department can calculate that actual amount, and the Attorney General's Office is going to have to be involved, too, on that and they're also going to have to...again, we'll have to negotiate price. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: With regard to the surface water users, most of those contracts to deliver ditch water have been there for some period of time if you haven't had the recent appropriations you have on some of the well appropriators. Is that correct or...? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: Right, that's correct. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: Most of those have been there for a long period of time. Okay. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: A long time. A lot of those systems probably went in back in the thirties and forties. Actually after the '39 flood down in Republican River Basin, that's when you saw the dams being put up for flood control. They were multipurpose. They also stored water for surface water irrigation. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: Thank you. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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SENATOR HEIDEMANN: Senator Fulton. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR FULTON: Senator Harms' question invoked a bill in my mind that is...think it's been introduced. I don't really know what's happened with it, but it's interesting. It was to address vegetative consumption. When it was explained to me, it was intriguing anyway. You're making a push here for funding toward surface water leasing. Would you also...how do the NRDs view this, this way, as a short-term fix, attacking the vegetative consumption? Does it apply? That would be my first question, what are the NRDs' views? Secondly, does it apply specifically to the Republican River such that this could alleviate some, for the short term anyway, alleviate some of the responsibility, obligatory responsibility we have to Kansas? So I guess those would be my two questions, and then I'm going to have a follow-up question after that. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: Okay. On the vegetation, we're supportive of doing vegetation management in both the Platte, Republican River Basins to increase the streamflow. Right now all we can do is estimate what kind of additional streamflow you might get out of that. They said there's...I think the bill number is LB458. It's Senator Carlson's bill. That bill essentially mandates that the NRDs clear the vegetation. Talked to Senator Carlson. We can either do that mechanically or through spraying, and if you've ever been out to the Platte River out west, you know, that's...you got about...in some areas it's over a mile wide of trees. If you wanted to clear-cut that, you're talking hundreds of thousands of dollars per mile to clear-cut that. The other option is to spray it and try to use spray to control the trees and other vegetation growth in there, but I don't know what the cost may be there. We've also got some label restrictions on what kind of pesticides and herbicides you can use down in the river. But again, this gets to the other point that you raise, as what kind of assurances can we give the taxpayers that our local property tax or state tax dollars go toward these projects actually turn around and give us a benefit, we want to make sure that there is a benefit there first. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR FULTON: Okay. The follow-up is something that's occurred to me. In the models, the model that exists, it sounds like the model, singular, that exists between the three states, is vegetative consumption figured into that model? Is there a variable that addresses vegetative consumption? We have...if we have vegetation consuming stream water, surface water here, maybe somewhere down the road on the other side of the border there's consumption going on that's not being accounted for either. Has that been brought up? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: I couldn't tell you whether...how that's calculated in that model. I can find out for you and try to get back to you on that. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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SENATOR HEIDEMANN: Senator Engel. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR ENGEL: Dean, I'm sorry I missed part of this, but the...I assume now all this land is taxed as irrigated land? Now if... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: Yes. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR ENGEL: ...if the...if you take it off of irrigation then will that revert back to dryland assessments then? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: If it's converted back. If you take water right away... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR ENGEL: Yeah. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: ...permanently it... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR ENGEL: Well, how about...well, how long is this moratorium on, or what are you talking about? Is it one year? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: With the surface water lease? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR ENGEL: Yeah. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: On an annual basis. It would stay, if it's just a one year, short-term one-year lease, that land would stay on the tax rolls as irrigated land. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR ENGEL: But then next year you do it again and again and again, so actually it's... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: You could eventually look at maybe permanently retiring those acres. That may be one option in the future, and then allowing that landowner to convert that land back to dryland for tax purposes. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR ENGEL: Of course, if they're getting subsidized for it I guess that they can keep paying the property taxes, but...yeah. Thank you. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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DEAN EDSON: Yeah. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Senator Wightman. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: Dean, I assume when you go out and start, if you do decide that's the course you're going to take and destroy vegetation or eliminate vegetation to try to increase streamflow, you also have to deal with the fact that that's become pretty valuable land and you're going to be almost all of that, isn't it, is under privately owned real estate. I know there are some where the power districts have bought up quite a bit of it, but that's going to be an issue, too, in addition to just the cost of reducing the vegetation, I assume. Because some of that land has become more valuable than the top irrigated land in the area. Isn't that correct or...? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: Yeah, there's...the majority of that land in the...it's call accretion ground that's along in the river where the trees or vegetation is growing, it's owned by private landowners and that value for that land with the vegetation and trees on it has increased for hunting and recreation purposes. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: I know in our area it's reached a point where it exceeds the value of good irrigated land even though it won't raise anything except deer and water fowl. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Last year we bought Bostwick. How many acre-feet did we buy? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: I don't recall off...I'd have to find out for you and from either the department or from the Attorney General's Office. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: And we're talking about 30,000 acre-feet this year? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: Well, I gave you just a round ballpark number. I don't know exactly what that number will be. It's estimated that in one district it's 26,000, but the snowfall melt that we're getting here in the last couple days, it's filling the reservoirs. Any future rain that we might get in the basin that gets to the reservoirs will determine how much water is available. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: And is there a cost figure for that yet? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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DEAN EDSON: No. Last year, when the state negotiated with the Bostwick, that discussion was between the state of Nebraska and Bostwick Irrigation District, and the NRDs did not participate in that discussion. We did...the NRD, the Middle Republican NRD did purchase some surface water rights in the Middle Republican, but that was...I think it was less than 2,000 acre feet that we bought there, but that's all the money we had available, or that was the only thing we could purchase within our budget limitations. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Any other questions of Mr. Edson? Seeing none, thank you for your testimony. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: Thank you. I'm glad to keep it within five minutes. (Laughter) [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: You can tell that water issues are a hot topic right now. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DEAN EDSON: Yeah. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Any other proponent testimony? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: (Exhibit 4) Good afternoon. My name is Don Batie, D-o-n B-a-t-i-e. I'm a farmer in Dawson County and I produce crops utilizing both surface and ground water. I currently serve as second vice president of Nebraska Farm Bureau and I am here today on behalf of Nebraska Farm Bureau to offer conditional support of LB322. We support portions of the bill and do not support other portions of the bill. I'll start off with that we do support the provisions addressing ethanol incentives. There's a tradition that we use a mix of General Fund dollars and checkoff monies to support the EPIC Fund, and this bill continues that tradition with \$15.5 million in General Fund and a extension of the corn checkoff for two more years, which will generate approximately \$25 million. We feel it's a little heavy on the agricultural side and the checkoff side, but we're willing to accept that so that we can continue to fund the program. Remaining of my testimony will be on water, that we just heard Dean Edson talk about. We do want to commend the Governor for recognizing it is a state issue and that the entire state needs to contribute to solve the problem. Attached, there's an editorial by president Keith Olsen, president of Nebraska Farm Bureau, about why we feel the entire state needs to address the water challenges. The Republican Basin, we just talked a lot about the Platte Basin, which Mr. Edson did not talk much about, is coming along in the near short-term future, and both basins are going to require considerable funding from the state, as well as locally. We do appreciate the \$2.7 (sic) million that is in the General Fund budget, as well as the \$300,000 for the Environmental Trust Fund the Governor is recommending.

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However, we cannot support the extension of the corn checkoff to be redirected to the Water Resources Cash Fund. The General Fund and Environmental Trust contributions amount to about 28 percent of the total, federal funds about 9 percent. That leaves the remainder to come from agriculture, approximately 63 percent of the total, using the Governor's numbers. And that does not take into account agriculture's contribution through increased local property taxes, which Mr. Edson talked about. We feel that more General Fund money needs to be included in the mix to better balance the load. Irrigated agriculture will bear the brunt of this cost of the regulations. We feel the Governor is low-balling the cost estimate of \$3 million per year. Dr. Ray Supalla is an economist at the University of Nebraska-Lincoln; did research a year ago before the corn prices increased considerably, and using his numbers we would come up to \$21 million a year of cost to agriculture. I do finally want to remind the committee that this is not a short-term problem. This is a long-term problem. It's going to take some long-range, long-term solutions, and part of that is to fund some of the...or follow some of the recommendations of the Water Policy Task Force, which are also attached to the testimony. The Water Policy Task Force wants to do an assessment of every basin in the state of Nebraska to start to gather what our needs are, both financially as well as water, and so that we can have a long-range discussion about how to meet these challenges. In summary, Nebraska Farm Bureau does support setting money aside for addressing the state's water issues; however, we feel that it puts, the bill, as it is, puts too much burden on agriculture and would recommend that we remove the checkoff provisions for the Water Resources Cash Fund. I'd be willing to answer any questions. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Mr. Edson had talked about fees and increased property taxes in prior testimony. In your opinion, is that a better avenue than a continued checkoff? Out of the three, what would you prefer? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: We would prefer local property taxes. We feel it's a fair way to raise the local funding. Irrigated land would pay the most; dryland, or rain-fed is the new term the university uses now, is rain-fed land, would contribute some, because they part of the problem. Municipalities would contribute some because they are part of the problem. And so we do prefer the property tax as being the local source of funding; however, we do feel that there needs to be a large General Fund infusion as well. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Senator Engel. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR ENGEL: Are you talking about surface water or ground water...or irrigated water... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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DON BATIE: In regards to what? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR ENGEL: ...irrigated water? Are you talking about... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: Far as property taxes or...? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR ENGEL: No, I mean what you're talking about now, Dean was talking about that it's going to take it out of the streams and so forth, and you're talking about taking it out of the ground. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: Well, in the Republican Basin, there's a mix of answers. To solve the compact for this next two years, we need short-range solutions, and the short-range solutions have to be quick response, and the quickest response are surface water or wells that are immediately adjacent to the streams. And so that is what the NRDs down in the Republican Basin are looking at doing. Long-range, all sources of irrigation have to be up to the table and willing to contribute, and that includes on the Platte Basin upstream of Elm Creek where we are overappropriated. All of irrigated agriculture is going to have to be willing to step to the table. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR ENGEL: Like Senator Synowiecki said earlier, a lot of the people drilled these wells in the last five years, you know, of course anticipating some type of problem. I know flying over Nebraska just yesterday, you know, out in some areas, I mean there's a lot of circles out there and land that, you know, that, you know, you can grow anything on sand, right, if you put enough water to it. So perhaps some of this land, I've always kind of wondered whether it was ever supposed to really been farmed. It is now, I know that, and it creates a problem now, but it's a problem we're facing now with land probably that should never have been farmed to start with. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: We're facing the problems now, I agree with you, and it's important to remember that all this land was developed for agriculture legally within the laws of the state of Nebraska. They were not breaking any laws. In fact, they were being encouraged by the state, as well as local bankers and financial officials, to continue to develop. When you develop property for irrigation, that helps increase the economic activity of the local community. And so it is...that is part of the way that all of Nebraska has benefited from irrigated agriculture. And so, in hindsight, we may look back and say, well, they shouldn't have done that; well, there's a lot of things I shouldn't have done, in hindsight, 20 years ago, but I can't change the fact. We have to start where we are today and move forward. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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SENATOR ENGEL: I think you're right, we've all done that. The thing is I think, though, that any time we do anything like that there's always a gamble, you know, and sometimes you win, sometimes you lose. And, of course, with weather, we don't have any control over that. Mother Nature pretty well takes care of that and sometimes you pay a price for it; sometimes you reap a lot from it. So just comments, is all. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Senator Harms. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HARMS: Yeah, Don, I was surprised that you would indicate that you would want to tax...pick up our dollars to property tax. The reason I say that is that Nebraska's agriculture is number one in the nation in property tax, and the last thing they need, at least after I got through my campaign and came off the streets, is property tax. Because that's, when you knock on their doors and you talk to farmers and ranchers, that's the last thing they want. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: You don't realize how hard that was for me to come up here and say that. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HARMS: (Laugh) I'm sure that's true. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: But when you look at the entire problem, we feel like there needs to be a mix, and looking at the options we have for coming up with funds locally, to do the local match with state fund dollars, because we think there needs to be a local-state matching process, we felt the best avenue for coming up with those local funds was a property tax. Because it...we felt it was probably the fairest way to differentiate the income based upon maybe how much they've contributed to the problem. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HARMS: Yeah, I'm not speaking for the committee, but I would tell you my views are it ought to be a blend with not only property tax but other tax dollars. I don't think we can just stick it on property tax. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: No. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HARMS: The other thing I wanted to ask you in regard to the...trying to take a look at these two different basins and collecting data and assessing those, what process would you use? Who would be involved in that? What kind of research would be done to assess this and bring this thing to the table so we could understand, and what science would you use to accomplish this task? [LB317 LB318 LB319 LB320

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LB321 LB322 LB323]

DON BATIE: You're talking about the Water Policy Task Force recommendations?
[LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HARMS: Right. You know, you're going to collect all that data. [LB317
LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: The Water Policy Task Force was appointed by the Governor and includes
representatives from the DNR, as well as NRDs. [LB317 LB318 LB319 LB320 LB321
LB322 LB323]

SENATOR HARMS: Is that LB962? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: Pardon? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HARMS: Is that LB962 that created that task force? [LB317 LB318 LB319
LB320 LB321 LB322 LB323]

DON BATIE: Yeah. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HARMS: Okay. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: And it's been ongoing for a couple years. I don't sit on that. I have
attended a few meetings, but I do not sit on it. But they will be utilizing experts,
independent experts, to evaluate the basins. Currently, Department of Natural
Resources is evaluating each basin to determine whether or not it's
overappropriated...or fully appropriated. That was part of the bill. They do that on an
ongoing basis. But the Water Policy Task Force felt that it was important that we might
just take a look across the board and get a good handle on what's going on. And the
Platte Basin and Republican Basin are at the fire first. Republican is number one on the
list because they have to...a one- or two-year deal. The Platte Basin is coming along
very quickly. They just signed a cooperative agreement with Wyoming and Colorado
and the Department of Interior and there has to be some reductions done there in the
next couple years. So we'll be back talking to you in the future on that river basin.
[LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HARMS: Well, one more question, then I'm...Don, one of the things that
farmers have told me in regard to LB962 is that we just simply have not funded that
adequately. Is that your views too? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: That is my views. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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SENATOR HARMS: And there's just not enough money. To do the very things you're talking about we're not going to accomplish with the funding that's in there now. Is that correct? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: That's...I would concur with that. I know it sounds like a lot of money, but... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HARMS: Takes a lot of money to resolve the issue. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: Water and, unfortunately for some of us that...water issues tend to get worse before they get better. Dean talked a little bit about the lag effects on the Republican, and we're finding it on the Platte, too, that we haven't had our bad years yet. They're coming up. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HARMS: I know. Thank you. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Senator Nelson. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR NELSON: With regard to the redirection of the corn checkoff there, that's currently, if I read this correctly, that's currently going to the EPIC Fund, you're opposed to taking it away from the EPIC and redirecting it. Can you give us an idea of about how much money that involves, the corn checkoff, if it continues at the same rate for corn and sorghum? Are we talking about... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: I'll do my best. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR NELSON: Sure. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: I'm not an expert in that. The checkoff currently is, like I say, going to the EPIC Fund, and part of the proposal does ask to extend that EPIC Fund for two years,...
[]

SENATOR NELSON: Right. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: ...which would generate approximately \$25 million, I believe, total of the two years. And then the Governor's recommendation was then to extend it on another 30 years and have it go to the Water Resources Fund, and that...that other extension we cannot support. We do support the extension for the EPIC Fund. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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SENATOR NELSON: Okay. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: The two year extension we do support. It's the extension beyond that, that we cannot support. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Any other questions? Senator Wightman. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: Don, you address in here the fact that 34 percent is coming from the agricultural checkoff and then a mix of...in regulatory...in-kind regulatory contribution that brings it up to 62 percent support of the water problem. Do you have a suggestion as to what kind of a mix you or Farm Bureau would like to see? You're talking about some of it coming from property tax. Are you talking about a greater share coming from the General Fund? Are you talking about any of it coming from a corn checkoff as it would extend beyond the contribution to the EPIC Fund? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: At this time we're asking that, you know, there is a small portion coming from the Environmental Trust Fund and a small portion coming from the federal government. We're asking that the remainder come from General Fund and...because the local property tax portion is not even included in those figures of that 63 percent. That would be...that local property tax increase would be on top of that even more. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: In other words, the 62 percent wouldn't even cover it. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: The 62 percent does not include any local property tax increases. That is strictly the in-kind the regulatory cost and the corn checkoff money. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: When you're talking local property tax, are you talking property tax only in those NRDs that have overappropriation, or are you talking about statewide? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: In this situation I think we'd be talking only about the NRDs that are involved in the situation, the four NRDs in the Republican Basin and I'm not sure exactly how many in the Platte Basin that would be involved. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: You're suggesting that most of that comes from General Funds from the state of Nebraska,... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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DON BATIE: Yes. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: ...the increase. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: Yes. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: Do you have any idea how much that would increase it over and above the Governor's funding, which I think was like \$138 million for ten years? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: I'm not...I'm not a fiscal analyst. I can't tell you. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: Okay. Thank you. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Any other questions for...Senator Synowiecki. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: Don, the irrigated...the irrigation that took place, those that irrigated enjoyed enhanced yields, enhanced productivity because of the irrigation. Some of that water usage may not have been prudent given our overall water situation, particularly with the state of Kansas. Do you agree to that? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: If I was had a magic wand, I'd probably agree with you that possibly looking back maybe it wasn't, but I'd be hard-pressed to tell you which was and which wasn't. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: I mean just philosophically speaking, generally speaking, some of these irrigators enjoyed enhanced yields, enhanced productivity because of what could have been not a very prudent use of the state's water resources. So why shouldn't we have an appropriate level of input from the checkoff system, given that? Would you agree that it's probably agricultural interest, for the most part, that has put us in the position we're in? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: I would agree that probably the largest consumption of water is agricultural. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: And isn't our contention with the state of Kansas water? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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DON BATIE: If I could address that, if you would give me a chance to address it, part of the problem was is that Nebraska has always assumed and kept saying over and over that ground water was not part of the compact with Kansas; it was only a surface water compact. Supreme Court overruled us. We lost that case. Ground water became part of the compact. As soon as the Supreme Court ruled that ground water was part of the compact, we were immediately over. All the ground that was developed was developed under the assumption that ground water was not part of the compact and would not be part of the problem. If you take ground water out of the equation, we are not in a...we would not have been in this situation. The reason we're in a crisis situation is because we lost the Supreme Court case on whether ground water was part of the compact or not. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: Okay. Okay. And so we're essentially on the hook... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: Yes. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: ...for both ground and surface waters. Again, I'm trying to navigate through this myself... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: Uh-huh. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: ...and trying to understand it. And these irrigators enjoy the benefits of that irrigation, whether it be surface or ground water, and they enjoy that...they enjoyed the benefits of the irrigation through enhanced yields. Now we want a majority of these funds to come from the General Fund, which is a combination essentially of income tax and sales tax revenue, which may disproportionately not be balanced relative to where these areas of concern are relative to the state of Kansas. You know, my...you know, if there was benefits by the agricultural community through the utilization of this water, and the utilization of the water was not prudent in terms of our relationship with Kansas in water utilization, I don't see why the checkoff, or even maybe this committee looking at a greater degree of checkoff, is not appropriate, given that history. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: I think if you would do a...have an economist in here and ask him exactly how irrigation benefits the state of Nebraska, you would be surprised how much Omaha's benefit from irrigation in Republican Valley would be, or the city of Lincoln. A great many of the manufacturing plants in Lincoln and Omaha are there because we have irrigation in central and western Nebraska. And I think it's little nitpicking to say that, well, farmer X shouldn't have done this 15 or 20 or 50 or 100 years ago, so we're going to tax him heavier. I think there's a lot of instances, a lot of businesses, that would say that, you know, we follow the rules, we follow the regulations, we did everything we

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were supposed to do, we did exactly what the state wants us to do, is develop our economy; and then 20 years later you're going to say, oh, you shouldn't have developed it there. That's too late. I think in this instance the state was a part of the problem because the state allowed the development to occur. And so I think the state has every bit of a right to have...step up to the plate. Don't get me wrong. I still agree that there needs to be a local component, and that local component I think should be involved with property taxes. However, I think the state's share ought to come from general tax funds, because if we take it from checkoff monies as well as from local tax dollars, as well as in-kind regulatory costs, you will put a basin out of business. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: But to put additional burden on the property taxpayers, some of which have little or nothing to do with our water situation, is that fundamentally fair? I mean, you might have a... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: I would...I'm not sure you could say that. Everyone in the basin has something to do with the shortage. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: So if I run a muffler repair shop and I conduct that business in a community within the basin, and you're going to increase my property taxes as a muffler repair shop repairman because of our water issue, I don't...I don't see the connection. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: I guess, you know, economies are all tied together, as you're well-aware of, and in a rural area they're very, very tightly tied together. I would suggest that the increase in property tax on the muffler repair shop would be quite a bit less than the increase would be on the farmer with ten pivots. He would be a consensually larger increase in property tax than that muffler repair shop. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: And wouldn't that...and wouldn't that farmer be disproportionately connected to the...to where we're at now relative to our water issues and the state of Kansas? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: If the farmer wasn't...if the farmer didn't have his irrigation, there probably wouldn't be a muffler repair shop there to start with. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: Well, we don't know that. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: Well, that's true. We also didn't know... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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SENATOR SYNOWIECKI: We don't know that. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: ...we also didn't know ten years ago that we were going to be in the situation with Kansas. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Senator Wightman. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR WIGHTMAN: Isn't it true, Don, that the farmer that owned ten pivots is going to be paying a substantially greater part, even if it's done through property tax, than the person who has the repair shop? Because the farmer who has ten pivots might be paying on \$3 million or \$4 million worth of property tax base compared to the muffler shop in some small towns that might be paying on a \$40,000 property tax base. Now that seems unreal, I'm sure, in Omaha, but it's probably true in a lot of small towns in Nebraska. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: Uh-huh, in rural Nebraska. Yes. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: But theoretically, isn't that...that increased or enhanced property tax rate theoretically offset by enhanced yields? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: We pay property tax whether we have a yield or not. Farming is a gamble. It's a business decision, it's a business risk, but it's high risk. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: Does the irrigation lessen the degree of the gamble? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: Irrigation does lessen the degree of the gamble. That's why we have higher property taxes for irrigated land than rain-fed land, about triple. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Any others? Senator Nelson. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR NELSON: A pretty good situation now with corn prices, but where was corn at two years ago? A dollar sixty a bushel or something like that? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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DON BATIE: I was lucky to get \$2 a bushel, yeah. Uh-huh. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR NELSON: Okay. Were farmers making much money at that time? Is that part of the gamble there? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: Price is always part of the gamble. Yields are a gamble. Prices are a gamble. Whether or not it's going to rain is a gamble. We try to control as much of those risks as we possibly can to try to survive the long term. We do look at a long-term situation. We don't look at a short term. Where I'm living has been in my family for 125 years. We've been irrigating on it for over 100 years, so we're not a very short-term irrigation group. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR NELSON: You obviously started out with gravity irrigation? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: I currently am all gravity, yes. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR NELSON: Still gravity. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: Yeah, most of my property is actually surface water irrigated and our canals and such does not work well with anything besides gravity. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR NELSON: I was interested in Mr. Edson getting by with six inches of water and raising 240 bushels of corn to the acre. Now where are you with your surface irrigation? What have you been able to do to cut down the usage? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: We've trimmed our uses not at the extent that Mr. Edson has and I know where his farm is at because we're from the same county, but our uses range from about 18 inches down to about 12 inches, and actually this could be another long discussion I could have with you another time on conservation, how conservation has actually exacerbated the problem. Conservation is not a good thing when you have a surface water irrigation projects on the thing. That actually makes the projects worse because there's no return flows. And so in some instances actually utilizing the water to run on down the road ditches and back in to the streams is a good thing, it's another use for the water, it's not a wasting of water. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR NELSON: Okay. Thank you. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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SENATOR HEIDEMANN: Seeing no other further questions, thank you for your testimony. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

DON BATIE: Thank you, Senator. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Any other testimony for, proponents? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

STEVE EBKE: (Exhibit 5) Yes, Mr. Chairman and members of the Appropriations Committee, my name is Steve Ebke. That's spelled S-t-e-v-e E-b-k-e, and today I'm representing the Nebraska Corn Growers Association. I want to speak to a couple of the sections in LB322. First group of sections that I'd like to comment on relate to the Ethanol Production Incentive Cash Fund and I think we can all acknowledge that ethanol has had a significant financial impact on Nebraska. The corn growers have long supported the ethanol production incentives and we recognize that we have obligations to those qualifying plants that are going to receive these incentives, and so we are in support of the provision to extend the corn and grain sorghum checkoff and to see that the General Funds in the amount of \$15.5 million are added to the EPIC Fund over a two-year period to keep it functioning as we move along. And there will be more funds that are needed in the future, but at this point, without knowing when those plants are going to come on line and so forth, we don't know that exact amount. But this will solve the short-term problem. And as Mr. Batie commented on, our policy, the Nebraska Corn Grower policy, is that we...and it's been a long-term policy within the state that the proximate sharing between General Funds and checkoff funds has been about a fifty-fifty basis. This proposal doesn't quite meet that but, again, we will support it to keep that fund solvent and meet that obligation. The other comments, and it's becoming just kind of a repetitive situation, but we, too, have some concerns about the portion of LB322 that involves the Water Resources Cash Fund. Again, we also want to commend the Governor for taking the initiative to propose this sort of thing and I think there's no question that water issues are a great challenge and the financial resources are going to be needed as the solutions are determined. And again, our members acknowledge that agriculture is going to have to play a role with the rest of the state in finding those solutions and in funding them; however, at this point we cannot support the language in Sections 15 and 16 that would propose to extend an existing checkoff to provide funds for the Water Resources Cash Fund. The language and intent of the corn checkoffs in Nebraska were to provide Nebraska corn growers will self-help programs; programs specifically to increase demand for corn within the state and, thereby, creating more markets and more profit opportunities. The checkoffs specifically implemented to fund...to provide funds for ethanol development were written with sunset provisions so that as the EPIC Fund obligations were met the checkoffs would cease. We certainly would encourage the Legislature to not break faith with the Nebraska Corn Growers by circumventing that original legislative intent and the sunset provisions of the ethanol

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checkoff. There's no question that production agriculture has a responsibility to assist with the determination of long-term solutions to address Nebraska's water issues, and our members are certainly inclined to work with the Governor, the senators, and Nebraska's other ag organizations in determining balanced options and solutions to the water problems. So I thank you for allowing me to testify, and if there are any questions I'll try to answer them. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Thank you for your testimony. Any questions for Mr. Ebke? Seeing none, thank you for your testimony. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

STEVE EBKE: Thank you. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Next proponent. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

ANDREA McALLISTER: (Exhibit 6) Good afternoon, Senator Heidemann, senators. My name is Andrea McAllister, A-n-d-r-e-a M-c-A-l-l-i-s-t-e-r. I am here to represent the State Advisory Committee on Problem Gambling and Addiction Services. I have a letter here from our chair, Wayne Choat, and I'd like to give you all a copy. It was faxed to me this morning, so I apologize that it's kind of rough to read. The advisory committee is in support of LB321 and the line-item for problem gambling. We appreciate the ongoing support of the Governor and the Legislature. I would also like to extend the invitation to tomorrow's breakfast that is put on by the State Advisory Committee on Problem Gambling and Addiction Services. It's tomorrow morning at 7:30, short presentation at 8:00, in Room 1126 here in the Capitol. That's all I have for you today. If you have any questions, I'd be happy to try to answer them. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Do we have any questions for Andrea? Senator Synowiecki. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: Andrea, what exactly did the Governor appropriate... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

ANDREA McALLISTER: To...sorry. Excuse me. Sorry. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: ...appropriate to the Gamblers Assistance Fund? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

ANDREA McALLISTER: In LB321? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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SENATOR SYNOWIECKI: Yeah, the amount. Do you know the...? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

ANDREA McALLISTER: \$250,000. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: Is that a sufficient amount of money to treat problem gamblers in our state with the proliferation of gambling both inside and outside our state? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

ANDREA McALLISTER: No. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: Thank you. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Any other questions? Thank you for your testimony. There any other further proponents? Seeing none, any further...any testimony against? Seeing none, would you like to close? Neutral, excuse me. Do we have any testimony in the neutral position? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

GREG LEMON: Thank you for recognizing my neutral testimony, Chairman Heidemann. Thank you. My name is Greg Lemon, G-r-e-g L-e-m-o-n. I'm president of the Nebraska Tax Research Council, testifying as a warm neutral today on LB321. Would like to applaud both the Governor and the Appropriations Committee, with the Governor's budget recommendation, the Appropriation Committee's preliminary recommendation, in making the hard decisions that were needed to provide a moderate budget growth. We all know it's very easy to say the budget should grow at the rate of inflation, it should grow at 3 percent or 4 percent or some number, but it's very much harder to take a look at the programs one by one and look at the needs of the state and make the hard decisions to provide that moderate growth rate. And I know I'm not telling you anything you don't know, but...and those of you that have gone through the hearings before, you're about to begin a process where probably well over 90 percent of the people you're going to hear from are going to be asking for more money. And just a reminder the Tax Research Council is an entity consisting of over 100 members, both public and private, that stand for efficiency and fair administration of both the tax laws and state government operations and state government spending. And I know you don't need this reminder, but my wife reminds me of things I don't need to be reminded of all the time as well. Just a reminder, as you listen to those 90-some percent asking for more money, to balance the taxpayer burden with that as you make your budget deliberations. And once again, do want to applaud both the Appropriations Committee and the Governor for making those hard decisions in their budget recommendations. With that, I would be glad to answer any questions the committee might have. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

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SENATOR HEIDEMANN: Are there any questions for Mr. Lemon? Senator Synowiecki. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: I would just take issue with the 90 percent. Think it's much higher than that. (Laughter) [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

GREG LEMON: Ninety-plus. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR SYNOWIECKI: I don't know of anyone that comes into our hearings and doesn't ask for more money, so... [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Any other questions? Seeing none, thank you for your testimony. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

GREG LEMON: Thank you. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: Any other testimony in the neutral position? Seeing none, would you like to close? [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

GERRY OLIGMUELLER: I gladly waive closing. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR HEIDEMANN: We're waiving closing. (See also Exhibit 7) At this time I'm going to turn...actually, I'm going to close the hearing on LB317, LB318, LB319, LB320, LB321, LB322, and LB323. And at this time I'm going to turn it over to the Vice Chair, Senator Kruse. [LB317 LB318 LB319 LB320 LB321 LB322 LB323]

SENATOR KRUSE: Thank you. We will now open on LB249 and we would welcome Senator Heidemann, if we might be able to find him some...oh, there he is. (Laugh) Welcome, sir. [LB249]

SENATOR HEIDEMANN: Thank you, Senator Kruse, fellow Appropriation members. LB249 is the Cash Reserve Bill. LB249 would eliminate language that would become obsolete on July 1, 2007. The language eliminated is the pledge of interest income from \$40 million of the Cash Reserve balance for the Early Childhood Educational Endowment. This bill does not cancel the pledge. It removes the language after the pledge obligation has been met. Number two, it eliminates a pending change in law that the allocation of the Cash Reserve Fund interest goes to the Capitol Restoration and Building Renewal. Under the current law, interest beginning July 1, 2007, is to be diverted to these purposes. This proposed bill reverts Cash Reserve Fund interest to the General Fund. Future budgets from the General Fund can build in plans for Capitol Restoration and Building Renewal in lieu of dedicating a fund stream--interest income--to the solely...for solely for these purposes. I recognize concerns over General

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Fund budget growth and post-hearing I may recommend one or more alternatives that use fund transfers or a temporary earmark for the masonry project only such that when completed the earmarking of the Cash Reserve interest expires. I want to make it clear that it's not my intent to threaten the masonry project funding. It is more...it is important to complete the project and to complete it quickly. With that, I would be...entertain questions. [LB249]

SENATOR KRUSE: Thank you. Are there questions for Senator Heidemann? [LB249]

SENATOR HEIDEMANN: Thank you. [LB249]

SENATOR KRUSE: Doesn't appear to be any. Thank you very much. Do we have proponents? Do we have opponents? Do we have anybody in the neutral position? I believe...no, he's making it very easy for us, or somebody is making it. I believe we're ready for closing, Senator. (Laugh) He waives closing, so I can't ask him what happened to the Early Childhood Education Endowment. (Laughter) We close the hearing on LB249. [LB249]

SENATOR HEIDEMANN: And that will be it for the hearings for the Appropriations Committee for today. Thank you very much. []

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Disposition of Bills:

LB249 - Held in committee.
LB317 - Advanced to General File, as amended.
LB318 - Advanced to General File.
LB319 - Advanced to General File, as amended.
LB320 - Advanced to General File, as amended.
LB321 - Advanced to General File, as amended.
LB322 - Advanced to General File, as amended.
LB323 - Advanced to General File, as amended.

Chairperson

Committee Clerk